

REMARKS

Claims 1-26, the only claims in the application stand rejected under 35 U.S.C. 103(a) as being unpatentable over Batten, GB 339,680.

Batten is directed to a device for feeding birds which uses a one-piece top in the form of an inverted bell-shaped shell and a feed (suet) tray positioned in the lower portion of the top. The device can serve both as a feeding station and as a birdhouse. The food is disclosed as being held in an upside down or downwardly opening food tray. It is described that the upper portion or bell be "turned" from a block of wood.

There is no disclosure in this patent of utilizing pre-made or commercially available ceramic clay flowerpots which by securing or connecting two or more together can be used to form an accessory, i.e., a birdhouse and/or feeding station. There is no disclosure by Batten of any material other than wood. It is pointed out that the shape of the Batten structure includes the enlarged radial flange 3. Such a structure although not impossible to mold, would be difficult to mold since this enlarged flange would require a specialty type mold. The Batten structure would require specialty equipment to make because of the one-piece construction of the top unit. Further, it has generally been believed, and contrary to the present invention, that birdhouses should be made from lighter weight materials that are not easily broken in a fall or the like. Thus, it is submitted that the manufacture of a bird accessory from clay or ceramic material is contrary to the Batten teaching which structure requires a one-piece top with integral radial flange. It would not be obvious therefore to construct the accessory as defined in Claims 1-25 and its method of manufacture as defined in Claim 26 from the teaching of Batten.

In addition to the foregoing, it is submitted that it would not be obvious to take pre-existing, commercially available “flowerpots” and by further processing them, for example, by simply adding holes, to make them into accessories for either feeding and/or housing birds. Nothing in Batten suggests such a structure or method. It is only the present invention where such suggestion can be found.

Additionally, the Claims have been amended to more clearly distinguish the present invention from the cited reference. It is respectfully pointed out that many of the limitations defined in the originally filed Claims were not addressed in the rejection. For example, the means of venting air through the accessory, the use of an inverted flowerpot as a top for the receptacle and that the two are connected together and made from commercially available flowerpots. Applicant is entitled to an addressing of each and every element in all the Claims which is respectfully solicited. Failure to do so is a violation of the duty of the Patent Office to provide a complete and detailed action on the merits. See *In re Sang Su Lee* 61 U.S.P.Q.2d 1430 (Fed. Cir. 2002) citing *McGinley v. Franklin Sports, Inc.*, 60 U.S.P.Q.2d 1001, 1008 (Fed. Cir. 2001).

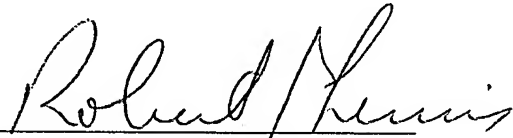
Given the foregoing, it is submitted that the Claims are in a condition for allowance. To summarize, nothing in Batten suggests the use of existing flowerpots for constructing an accessory for feeding and/or housing birds. Given the teaching of Batten, it would not be an obvious matter of choice to construct a bird accessory out of existing ceramic fired clay components. The present invention obviates the need for special tooling to construct an accessory since only the formation of holes and the use of an attachment device is needed to construct the defined accessory or practice the method of the subject claims.

If any issue regarding the allowability of any of the pending claims in the present application could be readily resolved, or if other action could be taken to further advance this application such as an Examiner's amendment, or if the Examiner should have any questions regarding the present amendment, it is respectfully requested that the Examiner please telephone Applicant's undersigned attorney in this regard.

Respectfully submitted,

Date: _____

12/30/03



Robert J. Lewis, Reg. No. 27,210
Blackwell Sanders Peper Martin LLP
720 Olive Street, 24th Floor
St. Louis, Missouri 63101
(314) 345-6000

ATTORNEYS FOR APPLICANT